IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/07/2003

Coram

The Honourable Mr. Justice V. KANAGARAJ

Crl.O.P.No.12940 of 2003
and
Crl.M.P.No.4549 of 2003

Dr. Ajith
Dr. Ashok .. Petitioners

-Vs-

State by Inspector of Police,
Asari Pallam Police Station,
Kanyakumari District.
(now transfer to CB CID,
Nagercoil),
(Crime No.274 of 2000) .. Respondent

Petition filed under Section 482 Cr.P.C as stated therein.

For petitioner: Mr. R. Karthikeyan

For respondent: Mr. A.N. Thambidurai,
Government Advocate (Criminal Side)

:O R D E R
The petitioners seeking to call for the records in PR No.20 of 2002 on the file of the Court of Judicial Magistrate No.I, Nagercoil and quash the same, has come forward to file the above Criminal OP on grounds such as that they were qualified doctors and performed a surgery on the deceased for severe stomach pain while the patient died and that a case has been registered against them.

2. On the part of the learned counsel appearing on behalf of the petitioners, they would strongly plead that being qualified doctors, the petitioners have only discharged the duties and responsibilities entrusted by law and that if at all negligence is attributed, the same being a medical negligence, only a civil liability could be contemplated and not criminal liability as decided by the Honourable Apex Court in the judgment 2000 (5) SCC 182 (State of Haryana v. Santra) and would pray for the relief extracted supra.

3. On the part of the learned Government Advocate on the Criminal Side, he would submit that the grave nature of negligence committed on the part of the petitioners would only give way for a criminal case of this

nature registered since the act perpetrated on the part of the petitioners was deliberate in conducting the surgery keeping the patient in a store room which was ill-equipped for such a major surgery to be held and therefore, the case has been rightly registered against the petitioners for the offence punishable under Section 304 IPC.

4. So far as the case cited by the learned counsel for the petitioners is concerned, the Honourable Apex Court, in a case of negligence on the part of the doctor, who performed the Tubectomy launched by the State Government of Haryana, on account of negligence in respect of surgery having been held on the petitioner, she again gave birth to a female child, as a result of which the lady, who underwent the sterilization operation sued the State and its officers responsible for the birth of the child in spite of sterilization claiming damages of Rs.2 lakhs for medical negligence in which the Honourable Apex Court has held that the affected party is clearly entitled to claim full damages from the State Government to enable to bring up the child at least till she attains puberty, thus refusing to interfere with the order passed by the High Court. This Judgment of the Honourable Apex Court held in a case of negligence wherein the birth of the child is the result of negligence of the doctors and the action taken on the part of the affected party is only a suit for damages.

5. On the contrary, in the case in hand, it is the death of the young man and the case registered against the petitioners is not for negligence, but under Section 304 I.P.C. for an offence punishable for Culpable Homicide not amounting to murder and, therefore, the case of damages on account of negligence by a doctor cannot be equated with the case registered under Section 304 I.P.C. for an offence punishable for Culpable Homicide not amounting to murder and, therefore, in the opinion of this Court the facts and circumstances and the decision of the Honourable Apex Court rendered in the judgment cited above is not applicable to the facts and circumstances of the case in hand, and therefore, this Court while declining to cause its interference into the charge sheet laid is inclined to issue a direction to the trial Court to expedite the trial procedure in the above case and conduct the same without any loss of time so as to decide the matter on merits and in accordance with law.

In result, subject to the above observations, the above Criminal Original Petition is without merit and the same is dismissed as such. Consequently, Crl.M.P.No.4549 of 2003 is also dismissed.

Index:Yes
Internet:Yes

asvm/sl

To

1. The Judicial Magistrate No.I,
Nagercoil

2. Inspector of Police,
Asari Pallam Police Station,
Kanyakumari District.

3. The Public Proseuctor,
High Court, Madras.